

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 05 C 0197
)	
MICHAEL P. TRINSKI, and ARROW)	Judge Kendall
MARINE INC.,)	
)	
Defendants.)	

CONSENT DECREE

WHEREAS, the plaintiff, the United States of America, on behalf of the United States Army Corps of Engineers (the “Corps of Engineers”), filed a complaint against defendants, Michael P. Trinski and Arrow Marine, Inc. alleging that defendants violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a) and Section 10 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. § 403 (“RHA”);

WHEREAS, the complaint alleges that defendants violated CWA Section 301(a) by causing fill and/or dredged material to be discharged into waters of the United States located at 100 N. Highway 12, Fox Lake, Lake County, Illinois. (“the site”);

WHEREAS, the complaint further alleges that defendants violated Section 10 of the RHA by placing a boat ramp and a sea wall in Pistakee Lake at the site;

WHEREAS, the complaint alleges that the discharge of fill material, and that the placement of a boat ramp and a sea wall was without authorization by the Corps of Engineers and is more fully described in the complaint in this case;

WHEREAS, the complaint seeks: (1) an order enjoining the defendants from any further unpermitted discharge of dredged or fill material into the waters of the United States, and

requiring defendants to remove the fill and/or dredged material, the boat ramp, and sea wall and restore the area; (2) an order enjoining defendants from installing any structures in navigable waters of the United States without a Corps permit; (3) and order enjoining the defendants from discharging any pollutant into navigable waters of the United States without a permit; (4) and order enjoining the defendants from using the boat ramp at issue in the complaint; (5) an award to plaintiff of an appropriate civil penalty pursuant to the terms of 33 U.S.C. §§ 1319(b) and 1344 for each day on which each violation occurred; (6) an award to plaintiff for its costs in connection with this action; and (7) an award to plaintiff of such further relief as this court deems just;

WHEREAS, the defendants deny the allegations in the complaint and deny that they violated the CWA and/or the RHA;

WHEREAS, the defendants allege that have agreed to settle this lawsuit to avoid the substantial legal fees necessary to properly defend themselves and the inherent uncertainties of litigation;

WHEREAS, the United States and the defendants agree that this Consent Decree does not constitute an admission by defendants of any liability whatsoever;

WHEREAS, this consent decree is intended to constitute a complete and final settlement of the United States' claims under the CWA and the RHA set forth in the complaint regarding the site;

WHEREAS, the United States and defendants agree that settlement of this case is in the public interest and that entry of this consent decree is the most appropriate means of resolving the United States' damages claims under the CWA and the RHA against defendants in this case; and

WHEREAS, the court finds that this consent decree is a reasonable and fair settlement of the United States' claims against defendants in this case, and that this consent decree adequately protects the public interest in accordance with the CWA and the RHA and all other applicable federal law.

THEREFORE, before the taking of any testimony and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. Jurisdiction and Venue

1. This court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403.

2. Venue is proper in the Northern District of Illinois pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the subject property is located in this district, and the causes of action alleged herein arose in this district.

3. The complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344, Section 10 of the RHA, 33 U.S.C. § 403.

II. Applicability

4. The obligations of this consent decree shall apply to and be binding upon defendants, their agents, employees and servants, and successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with the defendants whether or not such person has notice of this consent decree. In any action to enforce this consent decree defendants shall not raise as a defense the failure of any of their agents, employees, successors or assigns or any person, firm or corporation acting in concert or

participation with defendants, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the site shall not alter or relieve defendants of their obligations to comply with all of the terms of this consent decree. As a condition to any such transfer, defendants shall reserve all rights necessary to comply with the terms of this consent decree.

III. Scope of Consent Decree

6. This consent decree shall constitute a complete and final settlement of all civil claims for injunctive relief and/or civil penalties alleged in the complaint against defendants under CWA Section 301 and Section 10 of the RHA for the matters alleged in the complaint.

7. It is the express purpose of the parties in entering this consent decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All obligations in this consent decree or resulting from the activities required by this consent decree shall have the objective of causing defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA and the RHA.

8. Except as in accordance with this consent decree, defendants and their agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations, and are enjoined from creating any obstruction in waters of the United States unless such creation complies with the RHA and its implementing regulations.

9. This consent decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, Section 10 of the RHA, 33 U.S.C. § 403, or any other law. Nothing in this consent decree shall limit the ability of the Corps of Engineers to issue, modify, suspend, revoke or deny any

individual permit or any nationwide or regional general permit, nor shall this consent decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

10. This consent decree in no way affects or relieves defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

11. This consent decree does not relieve defendants of liability for any violations of the Clean Water Act or the RHA other than those alleged in the complaint.

12. This consent decree in no way affects the rights of the United States as against any person not a party to this consent decree.

13. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this consent decree and applicable law.

14. Except as provided in paragraphs 1 through 3, nothing in this consent decree shall constitute an admission of fact or law by any party.

IV. Specific Provisions

Civil Penalties

15. Defendants shall pay a civil penalty to the United States in the aggregate amount of one hundred thousand dollars (\$100,000) as follows: fifty thousand dollars (\$50,000) shall be paid within 30 days of entry of this consent decree, and the balance of fifty thousand dollars (\$50,000), plus interest accruing thereafter at the effective legal post-judgment interest rate computed daily and compounded annually from 30 days after entry of the consent decree, shall be paid within one year of entry of this consent decree.

16. Defendants shall make the above-referenced payments by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2004v00910.

Payment shall be made in accordance with instructions provided to defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Illinois. Any payments received by the Department of Justice after 3:00 P.M. (Central Time) will be credited on the next business day.

17. Upon payment of the civil penalty required by this consent decree, defendants shall provide written notice to the United States Attorney's Office for the Northern District of Illinois, that such payment was made in accordance with Paragraph 15.

18. Civil penalty payments pursuant to this consent decree are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

Restoration, Mitigation and Preservation

19. Defendants shall perform the following:

A. Within 240 days after entry of the consent decree, defendants shall remove the boat ramp, adjoining sea wall, and associated fill material identified in the attached drawing at Exhibit A; or, within 240 days after entry of the consent decree, provide certification to the Corps of Engineers that defendants have acquired a permitted, currently serviceable boat ramp on property, other than the property that is subject to the complaint, located on Pistakee or Fox Lake, and have demolished such ramp. The certification must include: (1) the name and address of the prior owner of the ramp; (2) the location of the ramp; (3) the name and address of the demolition contractor; and (4) a copy of the bill of sale for the ramp. During the 240-day period referred to above, defendants shall ensure that no person uses the structure identified in Exhibit A until the defendants have purchased and demolished a boat ramp pursuant to the terms of this paragraph.

B. If defendants purchase and abandon a boat ramp, as described in subparagraph A above, defendants shall apply for a Corps of Engineers permit for the boat ramp, sea wall and associated fill material identified in the attached drawing at Exhibit A;

C. Within 120 days of the entry of this consent decree, defendants shall provide proof to the Corps of Engineers and the United States, pursuant to paragraph 22, that Defendants have conveyed all interest in the property described on the survey attached hereto as Exhibit B to the Fox Waterway Agency (“FWA”) by: (1) executing and delivering to the FWA a quit claim deed; (2) executing and delivering all other necessary documents; and (3) paying all taxes due and satisfy all liens against the property. Defendants shall serve a copy of the executed deed and other documents required by this subparagraph on the United States and the Corps of Engineers as part of its proof of compliance with this consent decree.

Permanent Injunction

20. Defendants are permanently enjoined from: (1) installing any structures in navigable waters of the United States without a Corps permit; (2) discharging any pollutant into navigable waters of the United States without a permit; and (3) using the boat ramp and sea wall identified in the attached drawing at Exhibit A for any purpose other than by the fire department for an emergency or by the defendants for boat maintenance. In no event shall the boat ramp or sea wall identified in Exhibit A be rented, leased or otherwise used for commercial or private use other than as set forth in this subparagraph.

Stipulated Penalties

21. After entry of this consent decree, if defendants fail to timely fulfill any requirement of the consent decree, including without limitation paragraphs 19 and 20 above, they shall pay a stipulated penalty to the United States for each violation of each requirement of this consent decree as follows:

- | | | |
|----|--|--------------------|
| A. | For Day 1 up to and including
Day 30 of non-compliance | \$500.00 per day |
| B. | For Day 31 up to and including Day
60 of non-compliance | \$1,000.00 per day |
| C. | For Day 61 and beyond | \$2,000.00 per day |

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

VI. Addresses

22. All notices and communications required under this consent decree shall be made to the parties through each of the following persons and addresses:

- A. To the Corps of Engineers:
- Mitchell A. Isoe
Chief, Regulatory Branch
111 N. Canal
Suite 600
Chicago, Illinois 60606
- B. To the United States Department of Justice
- Kurt N. Lindland
Assistant United States Attorney
219 S. Dearborn St.
5th Floor
Chicago, Illinois 60604

C. To Defendants:

Michael Trinski
1121 W. Fortress Drive
McHenry, IL 60050-7127

with a copy to:

Robert M. Baratta, Jr.
Freeborn & Peters LLP
311 South Wacker Drive
Suite 300
Chicago, Illinois 60606

VII. Costs of Suit

23. Each party to this consent decree shall bear its own costs and attorneys' fees in this action. Should defendants subsequently be determined by the court to have violated the terms or conditions of this consent decree, defendants shall be liable for any costs or attorneys' fees incurred by the United States in any action against defendants for noncompliance with or enforcement of this consent decree.

VIII. Public Comment

24. The parties acknowledge that after the lodging and before the entry of this consent decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this consent decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this consent decree, unless the United States has notified defendant in writing that it no longer supports entry of the consent decree.

IX. Continuing Jurisdiction of the Court

25. This court shall retain jurisdiction over this action in order to enforce or modify the consent decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this consent decree. During the pendency of the consent decree, any party may apply to the court for any relief necessary to construe and effectuate the consent decree.

X. Final Judgment

26. Upon its entry by the court, this consent decree shall have the force and effect of a final judgment.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2006.

United States District Judge

ON BEHALF OF THE UNITED STATES:

PATRICK J. FITZGERALD
United States Attorney

By:

KURT N. LINDLAND
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-4163

Dated: _____

ON BEHALF OF DEFENDANTS:

Michael Trinski
1121 W. Fortress Drive
McHenry, IL 60050-7127

Dated: _____

Arrow Marine, Inc.

Dated: _____

Counsel for the Defendants

Robert M. Baratta, Jr.
Freeborn & Peters LLP
311 South Wacker Drive
Suite 300
Chicago, Illinois 60606

Dated: _____